



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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WINE LISTS AND WINE MENUS

Producers, Importers, or Wholesalers of Distilled Spirits, Wine,
or Malt Beverages and Others Concerned:

PURPOSE. The purpose of this circular is to inform industry members that an ATF ruling will be published in the April-June quarterly issue of the Alcohol, Tobacco and Firearms Bulletin. This ruling will read substantially as follows:

The Bureau of Alcohol, Tobacco and Firearms has received a number of inquiries regarding the giving, furnishing, or selling of wine lists or wine menus to retail establishments. The wine lists or wine menus at issue are those used primarily by restaurants as comprehensive price listings of the various wines offered for sale by the restaurants to their patrons. The menus also may contain prices for other alcoholic beverages. These items usually contain little or no advertising material and are, in most cases, a necessary part of a restaurant's business, serving the same function as a food or beverage menu.

Section 5(b) of the Federal Alcohol Administration Act (27 U.S.C. 205(b)) makes it unlawful, under certain jurisdictional limitations, for producers, importers, or wholesalers of distilled spirits, wine, or malt beverages to induce any retailer to purchase his products to the exclusion, in whole or in part, of products sold or offered for sale by others in interstate or foreign commerce, by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other things of value, except as permitted by regulation.

Regulations prescribed in 27 CFR 6.27 and 6.28 provide exceptions from Section 5(b) for consumer advertising specialties and retailer advertising specialties, respectively.

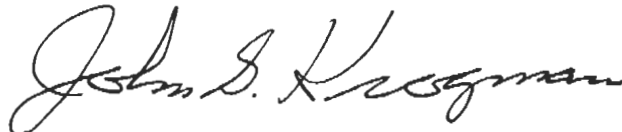
Section 6.28 provides an exception from Section 5(b) for retailer advertising specialties such as trays, coasters, mats, menu cards, meal checks, paper napkins, etc., which bear advertising matter and which are primarily of value to the retailer as point of sale advertising media. In order to fall within the intent of Section 6.28, the item's primary value must be as point of sale advertising for the supplier's product, and the utility value to the retailer must be secondary.

Wine lists and menus are primarily of value to the retailer as price listings for wines and other products offered for sale and, therefore, they are not retailer advertising specialties.

Accordingly, the reference to menu cards in Section 6.28 includes only point of sale advertising material which may be attached to a menu and not a wine menu itself. Since wine lists are not deemed to be retailer advertising specialties, the monetary advertising limits of Section 6.28(b) and (c) are inapplicable, and regardless of cost, these items are not considered to be within the exception provided by Section 6.28.

Section 6.27 describes consumer advertising specialties as such items as ashtrays, bottle and can openers, corkscrews, paper shopping bags, matches, printed recipes, wine lists, leaflets, blotters, postcards, pencils, etc., which bear advertising matter, and which may be furnished, given, or sold to a retailer for unconditional distribution to the general public. The intent of this section is to permit suppliers to give such advertising specialty items to retailers solely for the purpose of redistribution to consumers. Therefore, Section 6.27 does not authorize the distribution to retailers of wine lists or menus which are used by the retailer as part of his restaurant business.

Held, wine lists or wine menus utilized by a restaurant as comprehensive price listings of the various wines and other beverages served by the restaurant are not retailer advertising specialties because they are primarily of value as price listings of wines and other alcoholic beverages offered for sale and are not the simple point of sale advertising material contemplated by the reference to "menu cards" in Section 6.28. Regardless of cost, if the other elements of 27 U.S.C. 205(b) are met, the furnishing, giving, renting, lending, or selling of wine menus or lists of the type described above are prohibited by Section 5(b) of the Act. Further, such items are not consumer advertising specialties because they are used as part of the retailer's business and are not furnished to retailers for the purpose of ultimate distribution to the general public.



Acting
Director